

STATE OF CALIFORNIA  
FRAUD ASSESSMENT COMMISSION MEETING  
FRAUD DIVISION HEADQUARTERS  
SACRAMENTO, CALIFORNIA  
DECEMBER 14, 2005

Chairman Zachry gave general remarks before introducing Keven Star. Recently, Mr. Star was appointed by Governor Schwarzenegger to the position of Court Administrator, Division of Workers' Compensation.

Mr. Star stated, "I'm working with the Department of Insurance on coordinating at least a better communications system between the judicial system within the Division of Workers' Compensation with all of our judges and creating a liaison, not only between them, but also within the Uninsured Employer Fund Unit and the Department of Insurance." Mr. Star offered his assistance to serve as a liaison to expedite whatever process needs to take place.

Dan Stroski, Yolo County raised the issue of whether a referral to the Uninsured Employers Fund, can be made to the D.A.'s offices or to the department for the 3700.5 investigations and possible prosecution.

Dale Banda, Deputy Commissioner, Fraud Division, reported on a meeting he held with Mr. Star, one of the managers of the UEF, and Rick Plein, Bureau Chief for the Workers' Compensation Insurance Fraud Program. They discussed developing protocols for providing training to UEF.

Chairman Zachry called the meeting to order.

**Motion**

Commission member Fenimore made the motion to approve the June 22, 2005 summary meeting minutes.

Commission member Schatz seconded the motion.

**Action**

The motion passed.

**Motion**

Commission member Gallagher made the motion to approve the MOU between the Commission and the Department.

George Fenimore seconded the motion.

**Action**

The motion passed.

Supervising Deputy District Attorney Gary Fagan reported on the status of the Request-for-Application revisions. The working group consists of Fraud Division staff, district attorney representatives and Fraud Assessment Commission (FAC) member Donna Gallagher.

The committee is streamlining statistical information for consistency and revising the biannual and annual report format. Additionally, the department is working to set up a secured website so each county will be able to enter their data into these reports on line. The information can then be extracted and manipulated for program statistical reports as well as the year-end report for the Legislature and the FAC.

The committee has re-worked the Request-for-Application to remove redundancies and to bring the application more in alignment with administrative regulation requirements. This year's application will also have a glossary of terms to ensure that everybody is applying the same definitions for the terms and the statistics. Finally, the working committee is reviewing and revising the criteria utilized to evaluate the applications.

Commission member Gallagher raised the issue as to the cost of creating this new data base for the collection of county information on-line. Discussion ensued and it was determined that the cost issue would roll over into the upcoming discussion on the aggregate funding.

Department of Insurance Staff Counsel Vanessa Himelblau reported on the disposition of 3700.5 fines or penalties that currently are sent to the Uninsured Employers Fund (UEF). Ms. Himelblau commented that a letter would go to UEF to ensure that 3700.5 violations collected on department cases are itemized, recorded, and submitted to the Workers' Compensation Fraud Account.

Chairman Zachry moved the meeting to the next agenda item, the District Attorneys' Fiscal Year 2006/07 Prospective Budget Presentation. Chairman Zachry remarked that the full FAC had received and carefully reviewed the projected plans so presentations could be brief and confined to new information only.

### **Amador County**

Vern Pierson, Chief Assistant District Attorney, Amador County emphasized the implementation of their regionalized program, which includes the counties of Amador, Placer and Calaveras. Currently, there are two significant cases out of Placer and one is close to filing and the other is a provider fraud case in the early stages.

### **Santa Cruz County**

Bob Lee, District Attorney, and Thanh Ngo, Assistant Deputy District Attorney, from Santa Cruz presented the prospective budget. District Attorney Lee reported that Santa Cruz increased their workload by 500 percent in the last year.

During the past months, Santa Cruz has developed relationships and become a member of the Santa Clara Underground Economy Task Force. Additionally, the county meets

monthly with the Department's Morgan Hill office. Also, Santa Cruz has worked to mirror other successful counties such as, San Diego. Although Santa Cruz is smaller in size, a medical legal task force is now in the development process.

### **Santa Clara County**

Steve Gibbons, Assistant District Attorney, reported that 50 officers went to 13 locations to seize workers' comp related records on a cell phone case and while there seized \$300,000 in cash. As a result, part of their prospective budget includes the cost of a cash counting machine. The new machine will provide for a more expedient and accurate counting of money seized during the course of an investigation and attribute it to the case appropriately.

In the Senter Foods case, \$2.3 million is currently being held in trust. The new machine will eliminate the need for witnesses and the time consumed in verifying the correct amount manually.

Mr. Gibbons further remarked on the six premium fraud cases in progress. Two of the premium fraud cases are from the Sheet Metal Workers Union and are anticipated to be large cases in 2006/07.

Overall, Santa Clara County wants to maintain their program and is only requesting a 5 percent cost of living increase.

### **Alameda County**

Eric von Geldern, Alameda County, reported that the county was actually asking for less money this year. Mr. von Geldern noted that this request is the result of the program creating a slight efficiency. By way of example, a half-person in the program (percentage of time) was able to stop a multi-hundred thousand dollar fraud medical operation and sent the individual who committed the crimes to prison for five years.

Mr. von Geldern commented that he believed that everyone involved in the program was working hard and that the assessment should reflect the efforts and the need.

### **Riverside County**

Sara Danville, Supervising Deputy District Attorney, noted that Riverside is working with the department on a medical provider fraud case. In addition to the development of a DVD, the department and the Riverside DA Offices have identified an undercover operation, put a plan in place and have people to carry it out. Also, Riverside has a premium fraud case in preliminary hearing stage with an estimated loss of \$3.5 million in premium.

Riverside County is in the midst of a booming construction industry. As a result, there are many roofers. Riverside put together a sweep, with outside agencies such as the Police Department and the Sheriff's Department, targeting roofers for the willful failure to have workers' compensation insurance (3700.5). Many of these companies have now secured workers' compensation for their employees.

**Kern County**

David Wolf, Deputy District Attorney, remarked on the Southern California Fraud Investigators Association meeting and thanked Chris Hinkle from Riverside County for the great job in presenting premium fraud.

The Fresno Regional Office has been working with Kern County on several workers' compensation cases. (Mr. Wolf stated, "We've got a premium fraud case, which is orange grapes. And that's where someone claims that they are -- all their employees are doing vineyards, when in fact they're picking oranges.")

Presently, Kern County and the Department of Insurance arrested 3 suspects on an applicant fraud case. The suspects are a husband and wife, both with their own suspected fraudulent claims and totaling an estimated loss of over a million dollars.

**Tulare**

William Yoshimoto, Supervising Deputy District Attorney in Tulare County, reported that from Stockton to Kern County, there are four million residents now in the San Joaquin Valley. The extreme population growth and the increase in housing construction coupled with change in the nature of the agricultural industry are factors that have generated premium fraud cases in abundance.

Tulare and the four nexus counties of Kings, Fresno, Kern and Merced have received 51 premium fraud cases in the last six months. These factors need to be included in the consideration of the aggregate assessment.

**Santa Barbara**

John MacKinnon, Deputy District Attorney, reported that two jury trials were coming up in the next couple of months and that time spent on preparation would probably exhaust existing funding. Santa Barbara outreach efforts are proving to be very successful. The County is receiving direct referrals from local businesses.

**Ventura**

Thomas Frye, Deputy District Attorney, remarked on a couple of complex cases that would impact the upcoming fiscal year. One case is a provider fraud involving a chiropractor engaged in double billing. The investigations uncovered documents to show that this billing scheme had been going on for quite some time. Ventura filed five felony counts and the case is pending preliminary hearing.

Ventura is hoping to have a half-job investigator added to the program. This investigator would work on the 3700.5 cases and the overflow of the complex cases.

**Contra Costa**

Edward Dang, Deputy District Attorney, noted that in addition to the information supplied in the prospective budget, he wanted the Commission to be aware that Contra Costa will soon be working an undercover operation with Fraud Division's Benicia Regional Office.

**Merced**

Mark Bacciarini, Deputy District Attorney, noted that the 2006/07 budget reflects a significant budget increase because their caseload has significantly increased. In one case, six co-defendants have been indicted. Also, Merced has several applicant fraud cases pending.

Bud Ingram, Bureau Chief of the Central Valley, reported to the Commission that a press conference had been held which highlighted an undercover operation. This undercover case involves chiropractors who are providing unnecessary medical treatment. At this time, that's all that can be said about the case as too much information can be a disadvantage to the prosecuting authority.

**San Joaquin**

Supervising Chief Deputy District Attorney Scott Fichtner introduced himself to the FAC. Mr. Fichtner has been in his new position for about 5 months. He reported that new attorneys have been hired and the unit expects to be fully staffed during 2006/07.

**Los Angeles**

Head Deputy District Attorney Lance Wong reported that even though staff was decreased by one-third due to the funding cut, L.A. has filed 53 cases in the last five months. Head Deputy Wong thanked the FAC, the department and several counties for their assistance in turning the LA program around.

Additionally, the Fraud Interdiction Program convicted a Dr. Burgess for workers' compensation fraud, auto fraud and tax evasion. Dr. Burgess received an eight-year state prison sentence, was ordered to pay restitution of \$5 million of which \$2.2 million was directly attributed to workers' compensation.

Another case under the Fraud Interdiction Program is the conviction of a husband and wife who hired several doctors to work different offices and use their names to fraudulently bill. Both the husband and the wife were convicted and ordered to pay \$5.8 million in restitution.

**San Mateo**

Deputy District Attorney Elaine Tipton highlighted two felony jury trials. Both applicants are public employees. It was a difficult trial, but the jury returned guilty verdicts. The jury was struck by the fact that public funds were being paid for benefits to which the defendant was not entitled.

Also, a case was just brought to San Mateo from State Comp involving a death on a ranch. It appears that this case involves both premium fraud and employer fraud.

The submitted prospective budget is to add one more attorney to the unit.

## **Fraud Division Report**

Deputy Commissioner Banda began by acknowledging San Diego County on submitting a \$100,000 check to be deposited into the Workers' Compensation Fraud Account as a result of efforts in the Pizza Hut sweep.

Deputy Commissioner Banda reported that suspected fraudulent claims on an average are increasing about 23 percent per fiscal year. One reason is that outreach and training have produced more fraud awareness.

The department continues to train California Highway Patrol, the Department of Corrections, district attorneys and other allied agencies. These training modules are all Peace Officers Standardized Training (POST) approved

Deputy Commissioner Banda continued the report by noting that the Special Investigative Unit (SIU) regulations had been promulgated this year. The thrust of the new regulations is to provide insurance companies guidance and assist them in being productive partners in the anti-fraud efforts. Also, with the passage of Assembly Bill 1183, insurance companies must maintain a continuous SIU within the company.

Deputy Commissioner Banda further noted the importance of outreach and media relations. The department is in the process of adding the Fraud Assessment Commission to the website.

With the passage of AB 2866 (Frommer), the Fraud Division is now required to post workers' compensation convictions on the web-site and maintain them for five years. This new legislation has produced a lengthy protocol process to ensure that the department will not be sued.

With the use of a statistical chart, Deputy Commissioner Banda guided the FAC through some highlights. The electronic submission of FD-1s has produced greater efficiency and effectiveness and increased the number of submitted suspected fraudulent claims. The department has received positive feedback from insurance companies on the utilization of the eFD-1s. Insurance companies also comment on the letters received that state there are no resources available to open the investigation.

An analysis was prepared to offer the FAC an understanding of the issue. Taking into account the situation that Fraud Division wants to open all cases based on the quality of evidence and available resources, Fraud Division (directing FAC to the chart) would need 100 new investigators working on those particular cases alone.

Deputy Commissioner Banda reported that for every dollar spent, in fiscal year 04/05, there was \$5.1 in return on investment on chargeable fraud.

Also, Fraud Division will be initiating the rule-making process for workers' compensation regulations this upcoming year. "...I do believe there's a need to adjust

the regulations to conform with the Bureau of State Audit recommendations, the Commissioner's vision as well as the Commission," stated Deputy Commissioner Banda.

In the near future, Fraud Division will provide training to the Uninsured Employers Fund staff in identifying both claimant fraud and employer fraud. Fraud Division wants to look into the most egregious cases of employers that file bankruptcy.

Again this past year, the Department has augmented the assessment to the Fraud Division. Last year Fraud Division was funded \$16.1 million and for this fiscal year, we are requesting \$17.8 million.

The discussion ensued regarding the aggregate and Commissioner Gallagher raised the issue of the amount being expended on incidentals on a yearly basis. Additionally, what is the balance of the Workers' Compensation Fraud Account? Deborah Davis, Financial Management Division Chief, remarked that the annual incidentals are around \$122,000 and the balance of the account to be used to offset or augment the assessment totals \$498,007.

### **Public Comment**

Gary Fagan, Supervising Deputy District Attorney, noted that over the last year, the FAC charged the district attorneys with the responsibility of being fiscally responsible, expanding their programs outreach efforts, and provide more volume and better quality cases. In summary, Mr. Fagan commented that the district attorneys had met those challenges and expanded their efforts. The district attorneys have provided prospective budgets for the upcoming year and request that the FAC honor those requests by funding the counties in order that they can continue to carry out the mandates of the FAC.

Eric von Geldern, Deputy District Attorney in Alameda County, remarked that each district attorney has a legal duty to make every victim whole. The DAs work for restitution in each and every case and oftentimes over and above the chargeable amount.

### **Determination of Aggregate**

Chairperson Zachry provided an overview of his perspective of what he had heard during the public meeting. A new area of understanding is that there is increased exposure in the Central Valley. There have been changes in the focus of fraud cases from claimant fraud to employer and medical provider fraud. Also, the FAC now has a fuller understanding of chargeable fraud.

Last year, we worked on legislative changes that were to bring about modifications..  
"..Frankly, we still don't know the true impact of SB 899, 227, 228, AB 749 and others in terms of what it's going to do to California's workers' compensation fraud."

Additionally, Chairperson Zachry commented that although he understood Mr. Fagan's remarks, it was the responsibility of the Commission to ensure that maximum effort is

given in order to produce the best results. The Commission needs to be striving for more efficient ways in the program to yield great results.

Commission member Canepa noted that premiums have gone down and that makes doing business in California more cost effective. Some employers have a mind-set and no matter what laws are changed, they will continue to commit fraud. The only way to make an impact on this group of businesses is to shut them down.

Commission member Gallagher noted that the return on investment number was encouraging and signaled that the program was headed in the right direction. As for premium fraud, Commission member Gallagher believes this type of fraud will go more underground. “We see a lot of things, like employers who are not reporting their injuries. They are contracting directly with medical providers,” stated Gallagher. Commission member Gallagher further remarked that although she agreed with Mr. Fagan in that the FAC needs to give the district attorneys support, it is also necessary for the FAC to be fiscally responsible to the employers who pay the tab.

### **Motion**

Commission member Gallagher made the motion to determine the aggregate assessment at **\$40,977,541**. Below is the breakout of the expendable amount:

Department of Insurance	\$17,087,573
District Attorneys	\$22,650,968
Incidentals	\$ 130,000
Department of Industrial Relations	\$ 75,000
District Attorney Database	\$ 34,000
Workers’ Compensation Fraud Account	-\$498,007
Research Study	-\$1,000,000

This result is a collectible amount of **\$39,479,534**.

Discussion ensued.

### **Action**

Chairperson Zachry asked for the vote.

Member Fenimore	Aye
Member Schatz	Aye
Member Center	Aye
Member Gallagher	Aye
Member Canepa	No
Chairperson Zachry	Aye

The motion carried.

Chairperson Zachry introduced a few guests in the audience. Mr. Bill Warner from InterCare, SIU and Ms. Jane O’Neal, SIU Manager with Safeway.



Laura Clifford sent a reminder that the Employers Fraud Task Force is holding a fraud awareness session in January here in Sacramento.

Additionally, on behalf of the Commission thank you to Amador County for their efforts in updating the Employer Fraud Task Force video.

The next meeting is scheduled for January 18, 2006 in Sacramento.

The meeting was adjourned at 1:05 p.m.